

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CRIMINAL NO. 11-381 (SRN/JJG)

UNITED STATES OF AMERICA,)	SUPERSEDING INDICTMENT
)	
Plaintiff,)	(15 U.S.C. § 78j(b))
)	(15 U.S.C. § 78(ff))
v.)	(18 U.S.C. § 371)
)	(18 U.S.C. § 1341)
ROBERT ALLEN WALKER,)	(18 U.S.C. § 1343)
)	(18 U.S.C. § 1349)
Defendant.)	(18 U.S.C. § 2)

THE UNITED STATES GRAND JURY CHARGES:

1. Defendant ROBERT ALLEN WALKER (hereinafter "WALKER"), a Minnesota resident, was the founder of Bixby Energy Systems, Inc. (hereinafter "Bixby"), and from in or about 2001 until in or about May 2011, WALKER was the President, Chief Executive Officer, and Chairman of the Board of Directors of Bixby.

2. At all times relevant to this Indictment, Bixby was a privately-held company, located either in Maple Grove or Ramsey, Minnesota, involved in the development of alternative energy projects, including a coal gasification venture.

3. From in or about 2002 through various times ending in May 2011, Dennis Desender was, among other things, Chief Financial Officer and Independent Financial Consultant to Bixby. Desender, along with WALKER, was primarily charged with raising funds for Bixby and its business projects, including the coal gasification energy project.

4. From in or about 2006 through in or about May 2011, Gary Collyard, through his company, The Collyard Group, LLC, was a

"broker-dealer" or "finder" of investors for Bixby. Collyard, along with Desender and WALKER, was primarily charged with raising funds for Bixby and its business projects, including but not limited to the coal gasification energy project.

SCHEME AND ARTIFICE TO DEFRAUD

5. From at least 2001 to 2011, WALKER executed a scheme and artifice to defraud investors. WALKER, directly and through others acting at his direction or in concert with him, raised more than \$43 million from at least 1800 investors by means of offering materials and investor solicitations by WALKER, or others acting in concert with him, that contained materially false and misleading statements or omissions regarding: (i) the payment of salaries and commissions to Bixby officers and directors; (ii) the operational capability of Bixby's core product - a coal gasification machine; and (iii) Bixby's prospects for conducting an initial public offering.

6. It was part of the scheme to defraud that:

a. WALKER, and others acting in concert with him, provided written materials to Bixby investors which falsely stated that company officers and directors would not be compensated for their sale of Bixby securities, when, in fact, during that period, WALKER directed payments to an officer of Bixby of at least \$3 million in commissions for bringing in investors, out of which the officer kicked back more than \$600,000 to WALKER, who was also an Officer and Director of Bixby, in a commission-sharing arrangement that was concealed from investors and other members of the Bixby board of directors;

b. WALKER, and others acting in concert with him, both verbally and in written materials, made repeated misstatements regarding the operational capability and functionality of Bixby's coal gasification technologies and its coal gasification machines, falsely characterizing these products as "proven, operating systems" and "proven, fully functional, and ready for market," when, in truth and in fact, the coal gasification machine had substantial technological defects and did not function properly;

c. WALKER, and others acting in concert with him, repeatedly falsely told investors that Bixby was going to conduct an initial public offering of its stock in the near future, when, in truth and in fact, WALKER knew that Bixby could not conduct an initial public offering because, among other things, Bixby could not obtain audited financial statements; and

d. WALKER concealed from investors that new investor money was being used to make "lulling" payments to existing investors, payments that gave investors a false sense of security concerning the reality of their investment, and that investor money was being fraudulently diverted by WALKER for his own use and benefit, including to fund WALKER's lavish lifestyle, and not for the advancement of the various Bixby projects.

7. In furtherance of the scheme and artifice to defraud Bixby investors, WALKER, and others acting in concert with him or at his direction, used and caused the use of the United States mails, commercial interstate carriers, and interstate wire communications.

COUNTS 1-9
Mail Fraud
(18 U.S.C. § 1341)

8. The Grand Jury hereby re-alleges and incorporates paragraphs 1 through 7 of this Indictment.

9. From in or about 2001 through in or about May 2011, in the State and District of Minnesota and elsewhere, the defendant,

ROBERT ALLEN WALKER,

aided and abetted by other persons known and unknown to the Grand Jury, knowingly and intentionally devised a scheme and artifice to defraud and to obtain money and property from investors by means of material false and fraudulent pretenses, representations, promises and omissions of material fact, which scheme and artifice is described above in paragraphs 5 through 7. For the purpose of executing and attempting to execute the scheme and artifice described above, the defendant knowingly caused to be sent, delivered, and moved by the United States Postal Service and interstate commercial carrier various mailings, items and things, as described below:

COUNT	DATE (on or about)	MAILING
1	November 13, 2007	\$32,000 investment check payment mailed from C.T., Ft. Meyers, FL to Bixby Energy Systems, Inc., Wayzata, MN
2	November 20, 2007	\$70,000 investment checks mailed from W.J., Fredericksburg, TX to Bixby Energy Systems, Inc.,

COUNT	DATE (on or about)	MAILING
		Wayzata, MN
3	November 21, 2007	\$240,000 investment check payment mailed from W.J., Fredericksburg, TX to Bixby Energy Systems, Inc., Wayzata, MN
4	August 27, 2008	\$24,000 investment check payment mailed from E.B., Quincy, Washington to Bixby Energy Systems Inc., Ramsey, MN
5	September 19, 2008	Receipt of Shares and Acknowledgment mailed from Bixby Energy Systems, Inc., Ramsey, MN to E.B., Quincy WA
6	June 22, 2009	\$15,000 investment check payment mailed from E.B., Quincy, WA to Bixby Energy Systems, Inc, Ramsey, MN
7	July 31, 2009	\$14,116 investment check payment mailed from D.B., Tekamaah, NE to Bixby Energy Systems, Inc, Ramsey, MN
8	December 10, 2009	\$20,000 investment check payment mailed from D.B., Tekamaah, NE to Bixby Energy Systems, Inc, Ramsey, MN
9	March 31, 2010	\$15,010 investment check payment mailed from D.B., Tekamaah, NE to Bixby Energy Systems, Inc, Ramsey, MN

All in violation of Title 18 United States Code, Section 1341 and 2.

COUNTS 10-14
Wire Fraud
(18 U.S.C. § 1343)

10. The Grand Jury hereby re-alleges and incorporates paragraphs 1 through 7 of this Indictment.

11. From in or about 2001 through in or about May 2011, in the State and District of Minnesota and elsewhere, the defendant,

ROBERT ALLEN WALKER,

aided and abetted by other persons known and unknown to the Grand Jury, knowingly and intentionally devised a scheme and artifice to defraud and to obtain money and property from investors by means of material false and fraudulent pretenses, representations, promises and omissions of material fact, which scheme and artifice is described above. For the purpose of executing and attempting to execute the scheme and artifice described above, the defendant knowingly caused to be transmitted in interstate commerce numerous writings, signals and sounds, including the interstate wire communications described below:

COUNT	DATE (on or about)	WIRE DETAILS
10	November 14, 2007	Correspondence regarding Form of Subscription Agreement faxed from C.T., Ft. Meyers, FL to Bixby Energy Systems, Inc., Wayzata, MN
11	June 29, 2009	Full Subscription Form for Warrant Exercise, 15,000 shares faxed from E.B., Quincy, WA to Bixby Energy Systems, Inc, Ramsey, MN
12	December 1, 2009	E.J. email correspondence with Walker regarding status of investment
13	November 3, 2010	E.B. \$100,000 wire from Issaquah Community Bank, Issaquah, WA to Bixby Energy Systems, Inc, Crown Bank, account #xxx9605, Minneapolis, MN
14	May 18, 2010	L.L. email correspondence with WALKER regarding investment

All in violation of Title 18 United States Code, Sections 1343 and 2.

COUNTS 15-18
Securities Fraud
(Title 15 U.S.C. § 78(j)(b))

12. The grand jury re-alleges all the allegations contained in paragraphs 1 through 7 of the Indictment as if set forth in full herein.

13. WALKER, and others acting at his direction, solicited investors by providing presentations detailing the purported Bixby projects and the potential returns on investments. The investments offered and sold by WALKER were securities, as that term is defined by Section 2(1) of the Securities Act of 1933; Title 15, United

States Code, Section 77(b)(1); and Section 3(a)(10) of the Securities Exchange Act of 1934; Title 15, United States Code, Section 77c(a)(10).

14. WALKER knew that these offers to invest were securities.

15. In furtherance of the scheme to defraud, as described above in paragraphs 5 through 7, the defendant used and/or caused the use of the U.S. Mails, interstate commercial couriers, and interstate wire communications to provide investors with fraudulent communications that falsely indicated that the project was progressing, and which furthered the scheme by lulling investors into believing their funds were safe and secure. These communications concealed the true use of investors' funds, thus forestalling legal action and enticing investors to provide additional funds to the defendant and others.

16. In furtherance of the scheme to defraud, the defendant used a portion of the funds received from investors to make loan payments and interest payments to other individuals or investors. When some investors requested the return of their investments, the defendant (1) found replacement investors; (2) ignored the request; or (3) advised the investors that their money was not available for various reasons. WALKER and others then failed to return money to investors causing them economic harm and loss of, in some cases, all or substantially all of the money the investors placed with

defendant.

17. Beginning in or about 2001, and continuing until in or about May 2011, within the State and District of Minnesota and elsewhere, the defendant,

ROBERT ALLEN WALKER,

unlawfully, willfully, and knowingly, directly and indirectly, by use of means and instrumentalities of interstate commerce, and of the mails, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing a device, scheme and artifice to defraud, (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstance under which they were made, not misleading, and (c) engaging in acts, practices and a course of business which would and did operate as a fraud and deceit upon persons, to wit, WALKER, directly and through others acting in concert with him, made false and misleading statements and/or material omissions, that induced investors to make the investments in Bixby listed below:

COUNT	DATE (on or about)	INVESTOR	INVESTMENT DOCUMENT	INVESTMENT AMOUNT
15	January 15, 2007	D.B.	Subscription Agreement for Purchase of Bixby Shares	\$16,000
16	November 14, 2007	C.T.	Form of Subscription Agreement, Letter of Investment Intent and Lock-Up	\$32,000
17	June 29, 2009	E.B.	Full Subscription Form for Warrant Exercise, 15,000 shares	\$15,000
18	July 15, 2010	L.L.	Confidential Private Placement Memorandum, dated July 15, 2010	\$100,000

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

COUNT 19
Conspiracy to Commit Mail and Wire Fraud
(18 U.S.C. § 1349)

18. The Grand Jury re-alleges all the allegations contained in paragraphs 1 through 11 above as if set forth in full herein.

19. From in or about 2001 and continuing until in or about May 2011, in the State and District of Minnesota and elsewhere, defendant,

ROBERT ALLEN WALKER,

did knowingly combine, conspire, and agree with Dennis Desender, Gary Collyard, and other persons known and unknown to the grand jury, to commit offenses against the United States, that is:

a. To devise and intend to devise a scheme and artifice to defraud and to obtain money and property through material false statements and misrepresentations, and for the purpose of executing the scheme and artifice, to knowingly cause to be sent, delivered, and moved by the United States Postal Service and interstate commercial carrier various mailings, in violation of Title 18, United States Code, Section 1341; and

b. To devise and intend to devise a scheme and artifice to defraud and to obtain money and property through material false statements and misrepresentations, and for the purpose of executing the scheme and artifice, to knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communications, certain signals and sounds, in violation of Title 18, United States Code, Section 1343.

MANNER AND MEANS

20. The manner and means of the conspiracy include the misrepresentations and omissions described in paragraphs 1 through 7 above.

OVERT ACTS

21. In order to effect the objects of the conspiracy and in furtherance of the conspiracy, WALKER, and others acting in concert with him, committed and caused to be committed the following overt acts in the District of Minnesota and elsewhere, that is, they:

a. Provided investors and potential investors with Bixby offering materials (including Bixby's "Private

Placement Memorandum"), which contained material misrepresentations and omissions regarding the use of investor funds, and which were intended to induce investors into providing funds or to lull investors into believing that their funds were being used as represented;

b. Mailed investors shareholder newsletters ("The Bixby Blaze"), which contained materially false information and omitted material information regarding the functionality of the Bixby gasification technologies;

c. Made material misrepresentations and omissions regarding the use of investor funds both verbally and in written communications with investors; and

d. Caused to be received by mail, by wire transfer, and by personal delivery, investment funds totaling more than \$43 million.

All in violation of Title 18, United States Code, Section 1349.

COUNT 20

**Conspiracy to Commit Securities Fraud
(18 U.S.C. § 371)**

22. The Grand Jury re-alleges all the allegations contained in paragraphs 1 through 7 and 12 through 17 above as if set forth in full herein.

23. From in or about 2001 and continuing until in or about May 2011, in the State and District of Minnesota and elsewhere, defendant,

ROBERT ALLEN WALKER,

did knowingly combine, conspire, and agree with Dennis Desender, Gary Collyard, and other persons known and unknown to the grand jury, to commit offenses against the United States, that is:

a. To use and employ manipulative and deceptive devices and contrivances through the means and instrumentalities of interstate commerce, and the mails, in connection with the purchase and sale of securities, by: (a) employing a device, scheme and artifice to defraud, (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstance under which they were made, not misleading, and (c) engaging in acts, practices and a course of business which would and did operate as a fraud and deceit upon persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5;

MANNER AND MEANS

24. The manner and means of the conspiracy include the misrepresentations and omissions described in paragraphs 1 through 7 above.

OVERT ACTS

25. In order to effect the objects of the conspiracy and in furtherance of the conspiracy, WALKER, and others acting in concert with him, committed and caused to be committed the following overt acts in the District of Minnesota and elsewhere, that is, they:

a. Provided investors and potential investors with Bixby offering materials (including Bixby's "Private Placement Memorandum"), which contained material misrepresentations and omissions regarding the use of investor funds, and which were intended to induce investors into providing funds or to lull investors into believing that their funds were being used as represented;

b. Mailed or wired investors shareholder newsletters ("The Bixby Blaze"), which contained materially false information regarding the functionality of the Bixby gasification technologies;

c. Made material misrepresentations and omissions regarding the use of investor funds both verbally and in written communications with investors; and

d. Caused to be received by mail, by wire transfer, and by personal delivery, investment funds totaling more than \$43 million.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS

26. Counts 1 through 20 of this Superseding Indictment are hereby re-alleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

27. As the result of the offenses alleged in Counts 1 through 20 of this Superseding Indictment, the defendant,

ROBERT ALLEN WALKER,

shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violations alleged in Counts 1 through 20 of this Superseding Indictment.

28. If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON

